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Follow-up to the outcome of the Millennium Summit

In larger freedom: towards development, security and human rights for all

Report of the Secretary-General

Addendum

Human Rights Council

Explanatory note by the Secretary-General*

The Secretary-General's proposal

1. The establishment of a Human Rights Council would reflect in concrete terms the increasing importance being placed on human rights in our collective rhetoric. The upgrading of the Commission on Human Rights into a full-fledged Council would raise human rights to the priority accorded to it in the Charter of the United Nations. Such a structure would offer architectural and conceptual clarity, since the United Nations already has Councils that deal with two other main purposes — security and development.

2. The Commission on Human Rights in its current form has some notable strengths and a proud history, but its ability to perform its tasks has been overtaken by new needs and undermined by the politicization of its sessions and the selectivity of its work. A new Human Rights Council would help serve to overcome some growing problems — of perception and in substance — associated with the

* Initially transmitted by the Secretary-General to the President of the General Assembly on 14 April 2005, with the request that it be brought to the attention of the members of the General Assembly.

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Commission, allowing for thorough reassessment of the effectiveness of United Nations intergovernmental machinery in addressing human rights concerns.

3. The Secretary-General proposed the establishment of a Human Rights Council in his March 2005 report entitled "In larger freedom: towards development, security and human rights for all" (A/59/2005). The proposal reads:

> "If the United Nations is to meet the expectations of men and women everywhere — and indeed, if the Organization is to take the cause of human rights as seriously as those of security and development, then Member States should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council. Member States would need to decide if they want the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly, but in either case its members would be elected directly by the General Assembly by a two-thirds majority of members present and voting. The creation of the Council would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations. Member States should determine the composition of the Council and the term of office of its members. Those elected to the Council should undertake to abide by the highest human rights standards." (A/59/2005, para. 182)

4. The Human Rights Council would be **a standing body**, able to meet regularly and at any time to deal with imminent crises and allow for timely and in-depth consideration of human rights issues. Moving human rights discussions beyond the politically charged six-week session would also allow more time for substantive follow-up on the implementation of decisions and resolutions. Being **elected by the entire membership of the General Assembly** would make members more accountable and the body more representative. And being elected directly by the General Assembly — the principal United Nations legislative body — would also have greater authority than the Commission, which is a subsidiary body of the Economic and Social Council. Indeed, according to the Charter, responsibility for discharging the functions under the Economic and Social Council, including the promotion of human rights, is ultimately vested in the General Assembly. **A smaller membership** would allow the Human Rights Council to have more focused debate and discussions.

5. The Secretary-General believes that the Human Rights Council should be **located in Geneva**, allowing it to continue to work in close cooperation with the Office of the United Nations High Commissioner for Human Rights. The World Food Council (1974-1995) represents a precedent for a standing Council established by the General Assembly sitting outside New York. Similarly, the International Court of Justice at the Hague represents a principal Charter body located outside New York. While based in Geneva, as a standing body the Council would have the flexibility to "enhance" its presence in New York. Options would include holding special sessions in New York or having specific subcomponents based in New York so as to better interface with the General Assembly, the Security Council and the Economic and Social Council.

6. The Secretary-General further elaborated on a proposed new key **peer review function** for the Human Rights Council in a speech to the Commission on Human Rights on 7 April 2005:

> "It should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfilment by all States of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as the right to development. And it should be equipped to give technical assistance to States and policy advice to States and United Nations bodies alike. Under such a system, every Member State could come up for review on a periodic basis. Any such rotation should not, however, impede the Council from dealing with any massive and gross violations that might occur. Indeed, the Council will have to be able to bring urgent crises to the attention of the world community."

7. The peer review mechanism would complement but would not replace reporting procedures under human rights treaties. The latter arise from legal commitments and involve close scrutiny of law, regulations and practice with regard to specific provisions of those treaties by independent expert panels. They result in specific and authoritative recommendations for action. Peer review would be a process whereby States voluntarily enter into discussion regarding human rights issues in their respective countries, and would be based on the obligations and responsibilities to promote and protect those rights arising under the Charger and as given expression in the Universal Declaration of Human Rights. Implementation of findings should be developed as a cooperative venture, with assistance given to States in developing their capacities.

8. Crucial to peer review is the notion of universal scrutiny, that is, that the performance of all Member States in regard to all human rights commitments should be subject to assessment by other States. The peer review would help avoid, to the extent possible, the politicization and selectivity that are hallmarks of the Commission's existing system. It should touch upon the entire spectrum of human rights, namely, civil, political, economic, social and cultural rights. The Human Rights Council will need to ensure that it develops a system of peer review that is fair, transparent and workable, whereby States are reviewed against the same criteria. A fair system will require agreement on the quality and quantity of information used as the reference point for the review. In that regard, the Office of the High Commissioner could play a central role in compiling such information and ensuring a comprehensive and balanced approach to all human rights. The findings of the peer reviews of the Human Rights Council would help the international community better provide technical assistance and policy advice. Furthermore, it would help keep elected members accountable for their human rights commitments.

Issues to be discussed before the September 2005 summit

9. Member States will need to come to agreement on a number of issues in advance of the summit to be held in September 2005. Consultations with the High Commissioner would naturally be part of the process and she is ready to assist. Specifically, the Secretary-General suggests the need for agreement regarding the Human Rights Council on a number of issues as set out below.

Mandate and function

10. In addition to existing functions and responsibilities of the Commission under Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII), the

Human Rights Council would consider the situation of all human rights in all countries based on the above peer review system. Until being thoroughly reviewed by the Human Rights Council upon its establishment, the thematic and country-specific procedure mandates, as well as the intergovernmental working groups and the Subcommission, would be requested to report to the Human Rights Council. The Human Rights Council would reconsider and refine or amend those according to its own terms of reference, together with its agenda of work and working methods. The proposed Human Rights Council is only one component of the United Nations human rights system, which includes the mandate of the High Commissioner, secretariat functions and the treaty bodies. In determining the mandate and function of the Human Rights Council, consideration should be given to functions that are best performed at an intergovernmental level, taking into account complementarity with other bodies and bearing in mind the Commission's experience. The Human Rights Council should have the authority to recommend policy measures to other organs of the United Nations that can help in the process of implementation.

11. In addition to the proposed peer review outlined above, the Human Rights Council should also fulfil the following functions:

- Member States should be able to come together and take action when serious human rights situations develop. The Commission is able to do this by having the option to adopt specific country resolutions. While this capacity has attained an unhealthy degree of politicization — which the proposed peer review function of the Human Rights Council should address — the ability to address serious situations must be retained and revived. In addition, the Commission has the capacity to meet in extraordinary session if a majority of members agree; this capacity should be retained by the Human Rights Council, the envisioned format of which would facilitate consideration of urgent situations outside the framework of ordinary sessions. Furthermore, the High Commissioner would benefit from being able to call for action and support from a United Nations standing body with the authority of a full-fledged Council. A forum for dialogue among Member States and involving civil society on human rights issues, should be preserved. The dialogue would allow for constructive engagement on areas of disagreement and creative responses to deal with new and emerging issues, especially human rights problems for which existing international standards are ambiguous. The role of NGOs is crucial to providing policy inputs and views from the field to Member States. Similarly, the increasing prominence and activism of both national institutions and NGOs has elevated their involvement in the human rights debate to centre stage.

- The proposed Human Rights Council should play a pivotal role in overseeing and contributing to the interpretation and development of international human rights law. International law and standards are central to the United Nations system for the protection of human rights; indeed, the body of international human rights norms developed to date by the Commission is perhaps its greatest legacy. As a standing body, the Human Rights Council might find ways to overcome the delays currently faced by the Commission regarding some standard-setting activities. The establishment of a Human Rights Council would also reinforce the critical work of the treaty body system, which has contributed significantly to the development of international law over the past

20 years and could assist in the process of streamlining and strengthening the system to better carry out its mandate.

Composition

12. Instead of being elected by the Economic and Social Council, the membership of the Human Rights Council would be elected by a two-thirds vote of the General Assembly — which would be similar to the election process for Charter bodies. This would reflect the importance accorded to the body. Universality in voting would allow the body to be more accountable to the full membership of the Organization. Member States will need to decide on the length of terms, how Human Rights Council members would be elected and the rotation of members. If Member States choose to elect Human Rights Council members on a regional basis, all regional groups should be represented in proportion to their representation in the United Nations.

Size

13. The Commission on Human Rights currently has 53 members, only one less than the membership of the Economic and Social Council, which elects Commission members. Originally numbering 18 members, the Commission has grown dramatically over the years. A smaller membership on the Human Rights Council would allow more focused discussion and debate. Elevating the status of the Commission into a Council would increase the possibility for States to serve on one of the three United Nations Councils.

Principal or subsidiary body

14. There are two options for creating the Human Rights Council, as a principal organ or as a subsidiary body of the General Assembly. Establishing the Human Rights Council as a principal body of the United Nations would allow it to stand as a peer alongside both the Security Council and the Economic and Social Council and would require an amendment to the Charter. Establishing the Council as a subsidiary body of the General Assembly would not require an amendment to the Charter. In either case, the high standard of Charter bodies and "important matters" of a two-thirds majority vote should be retained.

Decision to be taken

15. Upon consideration of the above issues, Member States could agree to endorse, in principle, the establishment of a Human Rights Council in the final declaration of the September 2005 summit. Draft language provided in the report of the Secretary-General reads:

> "Agree to replace the Commission on Human Rights with a smaller standing Human Rights Council, as a principal organ of the United Nations or a subsidiary body of the General Assembly, whose members would be elected directly by the General Assembly by a two-thirds majority of members present and voting." (A/59/2005, annex, para. 8 (e))

Issues to be discussed after the September 2005 summit

16. Further work on how the Human Rights Council would fulfil the outlined functions above, as well as the details regarding size, composition and establishment, would be dealt with in the post-summit phase. Indeed, the fate of many of the Commission's existing functions, procedures and working groups would be left to the Council to endorse, renew or consider obsolete. The special procedures and NGO engagement are two aspects of the Commission that should continue with the Human Rights Council.

17. Another set of issues requiring further elaboration concerns the role and mandate of the Human Rights Council vis-à-vis the other components of the United Nations human rights system, in particular the Office of the High Commissioner, other United Nations agencies and programmes dealing with human rights, the treaty monitoring bodies, the General Assembly, the Security Council, the Economic and Social Council and the proposed new Peacebuilding Commission. The creation of the Human Rights Council would reinforce and strengthen the human rights work of those other components. For example, the Human Rights Council would provide an opportunity to rationalize the agenda of the Third Committee of the General Assembly with the work of the Human Rights Council, as well as to strengthen the General Assembly's ability to analyse and draw attention to continuing gaps in the implementation and mainstreaming of human rights throughout the United Nations system. Similarly, the Council could assist in the establishment, support and generation of contributions for various voluntary funds, especially to assist developing countries.